

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: : CHAPTER 13

PAUL HRYWNAK :

a/k/a Paul Hrywnak :

Debtor(s) :

CASE NO. 5:17-bk-01134-JJT

PAUL HRYWNAK :

Plaintiff :

Adv. No.

vs. :

KOST TIRE :

and :

CHARLES J. DEHART, III :

Defendants :

COMPLAINT TO DETERMINE THE VALIDITY AND EXTENT OF JUDGMENT LIEN
UNDER 11 U.S.C. SECTION 506(d) AND 11 U.S.C. SECTION 1322 (b)(2)

AND NOW COMES, Paul Hrywnak, by and through his counsel, Tullio DeLuca, Esq.,
and files this Complaint and states the following:

1. On March 23, 2017, Paul Hrywnak, (hereinafter "Plaintiff/ Debtor") filed a petition
under Chapter 13 Title 11, U.S. Code in the United States Bankruptcy Court for the Middle
District of Pennsylvania.

2. Charles J. DeHart, III, Esquire was appointed the standing Chapter 13 Trustee in the
above case.

3. Defendant is Kost Tire, with a mailing address of 300 Onondaga Road, Syracuse, New York 13219, a judgment creditor of the Debtor at the time of the filing of the Chapter 13 Bankruptcy Petition.

4. This Court has jurisdiction under 28 U.S.C. Section 1334 and 28 U.S.C. Section 157.

5. This is an action under 11 U.S.C. Section 506(d) and 11 U.S.C. Section 1322(b)(2) to determine the validity and extent of Defendant's secured claim against Debtor's real property.

6. An action to determine the validity, extent and priority of a lien is a core proceeding under 28 U.S.C. Section 157(b)(K) which a bankruptcy judge may issue final order on. See In re Szerwinski, 2011 WL 2552012 (Bankr. N.D. Ohio June 27, 2011) (concluding, without analysis, that action by trustee to avoid a lien pursuant to 11 U.S.C. § 544 is within the court's constitutional authority); In re Hudson, 2011 WL 3583278 (Bankr. W.D. Mich. Aug. 16, 2011) (acknowledging that lien avoidance action under 11 U.S.C. § 544 involved issues of state law, court nonetheless said that it "cannot envision a core proceeding that is more 'core' than lien avoidance"); In re Salander O'Reilly Galleries, 2011 WL 2837494 (Bankr. S.D.N.Y. July 18, 2011) (bankruptcy court could enter final order on trustee's suit to determine consignor's rights in consigned goods under 11 U.S.C. § 544); In re Bigler LP, 2011 WL 3665007 (Bankr. S.D. Tex. Aug. 19, 2011) (while lien priority dispute implicated issues of state law, bankruptcy court could enter final ruling in same without need to obtain parties' consent).

7. When the Debtor filed his Chapter 13 Bankruptcy Petition, the Debtor was the fee simple owner of real estate located at 514 O'Hara Road, Moscow, Pennsylvania 18444 (hereinafter "the property").

8. The Debtor believes, and therefore avers, that the present market value of the real property at 514 O'Hara Road, Moscow, Pennsylvania 18444 is \$420,000.00

9. Seterus retains a first mortgage lien against the property with a balance of \$472,558.00 as of the petition date.

10. Defendant, Kost Tire, entered judgment in the Lackawanna County Court of Common Pleas, docketed at Civil Case No. JC-00006702-02 in the amount of \$642.88 against Debtor.

11. As such, Kost Tire's judicial lien in Lackawanna County Court of Common Pleas to docket number JC-00006702-02 in the amount of \$642.88 is subject to being avoided in its entirety pursuant to 11 U.S.C. Section 506(d).

12. Therefore, Defendant's judicial lien in Lackawanna County Court of Common Pleas to docket number JC-00006702-02 in the amount of \$642.88 is subject to being avoided in its entirety pursuant to 11 U.S.C. Section 506 as the fair market value of the property is less than the first mortgage on the property.

WHEREFORE Debtor, Paul Hrywnak, prays the Court enter an Order approving the avoidance of the judgment against the Debtors in Lackawanna County Court of Common Pleas to docket number JC-00006702-02 in the amount of \$642.88 in its entirety, as the value of the property is less than the balance of the first mortgage.

Respectfully Submitted,

/s/Tullio DeLuca
Tullio DeLuca, Esquire
PA ID #59887
Counsel for Plaintiff
381 North 9th Avenue
Scranton, PA 18504
(570)347-7764

Dated: April 23, 2017